IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 828 of 2001

Ishrat Ali Khan …Applicant

Versus

Smt. Chotti Begam ..Opposite Party

Sri Sanjay Kaushik learned counsel for the applicant
Sri Arvind Vashisth learned counsel for the opposite party

Hon'ble B.C. Kandpal, J.

This petition has been filed under section 482 Cr.P.C. for quashing the order passed by S.D.M. Kashipur dated 03.07.1985 in case no. 1 of 1983 under section 145, 146 Cr.P.C. and also the judgment passed by 2nd Additional Sessions Judge, Nainital dated 13.08.1986 in Criminal Revision No. 102 of 1985.

Brief facts of the case are that the police station Jaspur submitted the resort before the S.D.M. Kashipur who on the basis of that report passed an order under section 146 Cr.P.C. Both the parties adduced their evidence before the S.D. M. Kashipur who ultimately came to the conclusion that the opposite party Chotti Begam is in possession of the accommodation two months prior from the date of attachment.

The applicant/petitioner Ishrat Ali Khan preferred the revision against the order passed by the S.D. M., Kashipur 03.07.1985 and the 2nd Additional sessions Judge, Nainital upheld the order passed by the S.D.M. Kashipur, thereby dismissed the revision vide judgment and order dated 13.08.1986.

Against the aforesaid order and judgment passed by the Revisional Court the petitioner has preferred the petition under section 482 Cr.P.C. before this Court.

Learned counsel for the petitioner has argued that both the courts below have ignored this aspect that the petitioner was in possession over the land in question two months prior from the date of attachment. It has also been submitted that the judgment of the mutation court has been ignored by the court below and there was no basis for the rejection of the testimony of the witnesses produced by Ishrat Ali Khan in support of his case.

Learned counsel for the opposite party has argued that this Court is not to act as a Second Revisional Court and the interference by this Court can be made only to prevent the abuse of process under the provision of 482 Cr.P.C.

Learned counsel for the opposite party has argued that this Court is not to act as a Second Revisional Court and the interference by this Court can be made only to prevent the abuse of process under the provision of 482Cr.P.C.

Learned counsel for the opposite party has cited before me **1995 S.C.C. (Criminal) page 634 Ganesh Narayan Hegde Vs. S. Bangarappa and A.I.R. 1999 S.C.C. page 2374 Rajathi Vs. C. Ganesan.**

Perusal of the aforesaid judgments passed by the Apex Court reveal that the Hon'ble Court has held as follows:-

"While it is true that availing of the remedy of the revision to the sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a mater it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if

the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charge.

In the present case the High Court has gore beyond the purview of Section 482 in quashing the charge. The High Court has not held that the evidence adduced by the complaint. Oral and documentary, if unrebutted, would not heave warranted the conviction of the accused within the meaning of Section 245(1) Cr.P.C. nor has it held that on the evidence adduced, the learned Magistrate could not have reasonably formed an opinion that there is ground for presuming that the accused has committed an offence, as contemplated by Section 246(1) Cr.P.C.

The petitioner by way of this petition under Section 482Cr.P.C. intends that his case be decided after reappraisal of the evidence. It is, therefore, to be seen whether this Court can enter into the merits of the case while exercising the jurisdiction under Section 482 Cr.P.C.

On examination of the record, I do not find that there is grave miscourage of justice or abuse of process of the court or the required statutory procedures has not been complied with or there is a failure of justice or order passed by the Magistrate as well as the judgment passed by the Sessions Judge in revisional court requires correction. It is not necessary for this Court to examine the whole evidence threadbare to exercise the jurisdiction under Section 482 Cr.P.C. of the Court. This Court while exercising power under Section 482 Cr.P.C. of the Court cannot act as s substitute for a Second revisional Court under sub-section (3) of Section 397 of the Court. The very fact that

the inherent powers conferred on the High Court are vast would mean that these are circumscribe and could be invoked only on certain said principles.

In the instant case, the Sub Divisional Magistrate has passed the impugned order dated 03.07.1985 after assessing the evidence on record and thereafter the learned Sessions Judge also declined to interfere in the matter in revision. Therefore, this Court while exercising the jurisdiction under section 482 Cr. P.C. is not suppose to embark upon an inquiry whether the judgment and order passed by the courts below are justified on merits or not.

For the above reasons, the petition being devoid on merit is liable to be dismissed. I do not find any ground for interference in the order as well as judgment passed by the court below by way of this petition filed under Section 482 Cr.P.C.

The petitions accordingly dismissed.

(B.C. Kandpal, J.)

July 16, 2004
ASWAL